

THIS DISPOSITION IS NOT
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OF THE TTAB

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RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Liberty Hardware Mfg. Corp.

Serial No. 76/175,702

Edgar A. Zarins of Masco Corp. for Liberty Hardware Mfg. Corp.

Edward Nelson, Trademark Examining Attorney, Law Office 106
(Mary Sparrow, Managing Attorney).

Before Cissel, Walters and Bucher, Administrative Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On December 6, 2000, applicant, a corporation organized and existing under the laws of Florida, filed the above-identified application to register the mark VANOVER on the Principal Register for "cabinet hardware," in Class 6. The basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with these products.

The Examining Attorney refused registration under Section 2(e)(4) of the Lanham Act, 15 U.S.C. Section 1052 (e)(4), on the ground that the mark is primarily merely a surname. Attached to the Office Action in support of the refusal to register was a sampling of fifty entries retrieved from the Examining Attorney's search of the infoUSA database, formerly known as PhoneDisc, wherein 2276 people whose surname is "Vanover" are listed as residing in the United States. A representative sample of listings with complete names and addresses was included.

The Examining Attorney also raised informalities with respect to the identification-of-goods clause and the classification of the products encompassed within the terminology employed by applicant.

Applicant responded by amending the identification-of-goods clause to read as follows: "bathroom accessories namely towel bars, towel rings, tissue holders, soap dishes, robe hooks and tumbler/toothbrush holders," in Class 21. Applicant conceded that "the mark certainly operates as a surname as evidenced from the listings submitted by the Examining Attorney," but argued that the primary significance of the mark is not that of a surname. Applicant contended that "[c]onsumers would view the mark as merely a fanciful designation for the goods."

The Examining Attorney was not persuaded by applicant's arguments, and in the second Office Action, he continued and made final the refusal to register under Section 2(e)(4) of the Act. Additionally, he noted that the term "robe hooks" in the amended identification-of-goods clause is an unacceptable, indefinite term which could identify products in different classes. He stated that "tissue holders" and "tumbler/toothbrush holders" are indefinite terms, but that "facial tissue holders" and "tumbler holders and toothbrush holders" would be acceptable. He also noted that metal robe hooks belong in Class 6, whereas non-metal robe hooks are properly classified in Class 20. Accordingly, the Examining Attorney again required amendment to the identification-of-goods clause.

Applicant responded by amending the application to identify the goods with which it intends to use the mark as "bathroom accessories namely towel bars, towel rings, toilet tissue holders, soap dishes, tumbler holders and toothbrush holders," in Class 21, and by filing a Notice of Appeal.

The Board instituted the appeal, but suspended action on it and remanded the application to the Examining Attorney for consideration of the amendment proposed by

applicant. The Examining Attorney accepted the amendment to the identification-of-goods clause and returned the application to the Board for resumption of action on the appeal.

Applicant timely filed its appeal brief and the Examining Attorney timely filed his brief, but applicant did not request an oral hearing before the Board. Accordingly, we have resolved this appeal based on the written record arguments before us.

The sole issue is whether the refusal to register VANOVER under Section 2(e)(4) of the Lanham Act is proper. Because the Examining Attorney has met his burden of establishing that the primary significance of the term sought to be registered is that of the surname, the refusal to register is appropriate.

The test for registrability under this section of the Act is well settled. The issue is whether the primary significance of the word to the purchasing public is that of a surname. The initial burden is on the Examining Attorney to present evidence sufficient to make a prima facie showing of the surname significance of the word. Once this is accomplished, the burden shifts to the applicant to rebut the showing made by the Examining Attorney. In re Hamilton Pharmaceuticals Ltd., 27 USPQ2d

1939 (TTAB 1993). The Examining Attorney met his burden by submitting the results of the search of the infoUSA database, which establishes that "Vanover" is the surname of thousands of people in the United States.

As noted above, applicant concedes this fact, but contends (notably, without any evidence in support of this contention) that in spite of the fact that so many people have the surname "Vanover," its primary significance to purchasers of the bathroom accessories listed in the application would nonetheless be that of a trademark, an indication of the source of the goods. Applicant argues that this would be so because "VANOVER" does not have "the look and feel" of a surname. An obscure surname or one that is unlike a surname in appearance or connotation may not fall within the proscription of Section 2(e)(4). See *In re Benthin Management GmbH*, 37 USPQ2d 1332 (TTAB 1995), and *In re Sava Research Corp.* 32 USPQ2d 1380 (TTAB 1994). In the instant case, however, applicant has presented no evidence upon which the Board could base a conclusion that the primary significance of VANOVER is anything other than that of a surname. Without any such evidence, we simply cannot adopt applicant's position.

DECISION: The refusal to register under Section 2(e)(4) is affirmed.